

II. Remarks/Arguments

Applicant respectfully requests entry and consideration of Applicant's remarks and request for reconsideration herein. Applicant also provides clarifications of remarks made earlier in the Office Action Response dated May 14, 2007.

Applicant provides the response herein to the Final Office Action of July 2, 2007 and would look forward to the opportunity to go over the Office Action Response via telephone or otherwise if deemed helpful to advance prosecution of this application.

The Office Action cited various references with respect to Applicant's independent claims 1 and 72 and dependent claims 73-89 dependent on claim 72, restating the previous rejections under 102 and 103 and including a further response to arguments. Applicant herein has provided remarks to show that above claims are patentable in view the cited references. Applicant respectfully traverses the rejections in view of Applicant's response in the Office Action Response of May 14, 2007 and the additional response herein. As noted, Applicant respectfully points out that the claims 1 and 72 amended in the Office Action Response of May 14, 2007 and dependent claims 73-89 dependent on claim 72 include various distinguishing features over the references; in addition, Applicant's independent claims 1 and 72 include, in part, separating "at least some nucleic acid."

In view of the remarks herein, Applicant respectfully requests reconsideration of the rejections under 102 and 103. Applicant's amended claim 1 includes a tube for use in "separating at least some nucleic acid." Applicant notes that the Shapiro, Card or Forsythe references or the other references (as noted in the earlier response) do not disclose the elements of claim 1 so as to be capable of performing the example intended use which reads on certain example embodiments in the specification. As such, none of the references contemplates "separating at least some nucleic acid" in claim 1 along with other features of claim 1 which reads on certain example embodiments in the specification. Additionally, Applicant's amended claim 72 includes a vessel for use in "separating at least some nucleic acid." Again, Applicant notes that the Shapiro, Card or

Forsythe references or the other references (as noted in the earlier response) do not disclose the elements of claim 72, or claims 73-89 dependent on claim 72, so as to be capable of performing the example intended use which reads on certain example embodiments in the specification. As such, none of the references contemplates
5 “separating at least some nucleic acid” in claim 72 along with other features of claim 72 which reads on certain example embodiments in the specification.

In addition, with regard to the Office Action Response dated May 14, 2007, Applicant provides the remarks herein to clarify same. Applicant notes that independent claims 1 and 72 and dependent claims 73-89 dependent on claim 72 read on various
10 embodiments in Applicant’s specification and that nothing in the previous Office Action Response is intended to indicate that the claim is limited by remarks relating to discussion of embodiments or example embodiments in the Office Action Response which are amended and clarified as follows. Please make the following changes to the remarks in the Office Action Response dated May 14, 2007. Page 9, line 13: Please
15 replace line 13 in its entirety with the following: “In view of the amended claim 1, Applicant”. Page 9, lines 16-19: Please replace lines 16-19 in their entirety with the following: “other features of the amended claim 1. In this way, claim 1 is patentable over the cited references. (It should be noted, that in claims other than claim 1, the other types of separation other than as noted above may be accomplished.” Page 9, lines 20-21:
20 Please replace lines 20-21 in their entirety with the following: “Applicant does not intend for these remarks to apply to other claims which may be filed to include elements other than those in claim 1.)” Page 9, line 23: Please replace line 23 in its entirety with the following: “claim 72. Applicant provides remarks herein to show that claim 72 as”. Page 10, line 3: Please replace line 3 in its entirety with the following: “Regarding claim
25 72, Applicant respectfully traverses the”. Page 10, line 6: Please replace line 6 in its entirety with the following: “with the other elements in the amended claim 72.” Page 10, lines 8-9: Please replace lines 8-9 in its entirety with the following: “(Applicant does not intend for these remarks to apply to other claims which may be filed to include elements other than those in claim 72.)” Page 10, line 10: Please replace line 10 in its entirety with

the following: "Applicant also notes that the remarks with regard to". Page 10, line 13: Please replace line 13 in its entirety with the following: "Office Action regarding same. In view of the amended base". Page 10, line 24: Please replace line 24 in its entirety with the following: "Claims 77 and 79-82 are dependent on". Page 11, line 14: Please replace
5 line 14 in its entirety with the following: "the references to arrive at claim 72 as now amended. Savas sets forth". Page 11, line 21: Please replace line 21 in its entirety with the following: "With respect to claim 72 as well the dependent claims of". Page 11, lines 23-24: Please replace lines 23-24 in their entirety with the following: "foregoing. In addition, Applicant notes that the remarks with regard to independent claim 72
10 distinguishing over the cited patents also apply to the dependent". Page 11, line 26: Please replace line 26 in its entirety with the following: "regarding same. In view of the amended base independent claim 72". Page 12, lines 1-2: Please replace lines 1-2 in their entirety with the following: "may be filed to include elements other than those in claim 72 or its dependent claims.)" Page 12, lines 3-4: Please replace lines 3-4 in their entirety
15 with the following: "Applicant also notes that the remarks herein are made only with respect to claims 1 and/or 72 and the indicated dependent claims, as noted". Page 12, lines 7-9: Please replace lines 7-9 in their entirety with the following: "that they apply or are otherwise related--with regard to any other features, aspects, or otherwise of the above-referenced application or any other claim."

20 Additionally, as noted before, Applicant also notes that the remarks herein are made only with respect to claims 1 and/or 72 of the above-referenced application and reserves the right to provide any further clarification or correction regarding the remarks or other claims. The remarks herein are not made or do not apply--unless indicated otherwise--with regard to any other features, aspects, or otherwise of the above-
25 referenced application or any other claim.

Please note that Applicant would welcome any further communications regarding Examiner's Office Action or Applicant's Remarks or response if it would be helpful to further prosecution of the application.

Application Serial No.: 10/641,378
Express Mail No.: EB 373059800 US
Date: January 2, 2008

Date:

January 2, 2008

Respectfully submitted,



Michael A. Evans

Reg. No. 57,028

DeWalch Technologies, Inc.

6850 Wynnwood Lane

Houston, Texas 77008

Tel.: 713-861-8993

Fax: 713-861-8997

ATTORNEY FOR APPLICANT